

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

OPENPITTSBURGH.ORG and TRENTON POOL,	}	
	}	No. 2:16-cv-01075-MRH
Plaintiffs,	}	
	}	Judge Hornak
vs.	}	
	}	
KATHRYN BOOCKVAR, in her official capacity as the	}	
acting Secretary of the Commonwealth of Pennsylvania;	}	
DAVID VOYE, in his official capacity as Manager of the	}	
Allegheny County Division of Elections; KATHRYN M.	}	
HENS-GRECO, in her official capacity as an interim	}	
Member of the Allegheny County Board of Elections;	}	
THOMAS BAKER, in his official capacity as an interim	}	
Member of the Allegheny Board of Elections and	}	
ROBERT PALMOSINA, in his official capacity as an	}	
interim Member of the Allegheny Board of Elections,	}	
	}	<i>Electronically Filed.</i>
Defendants.	}	

**SECRETARY BOOCKVAR'S MOTION TO
DISMISS THIRD AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM**

AND NOW, comes the defendant, Secretary Boockvar, by her attorneys, Scott A. Bradley, Senior Deputy Attorney General, and Karen M. Romano, Acting Chief Deputy Attorney General, Chief, Litigation Section, and moves to dismiss Secretary Boockvar from this matter:

1. Plaintiffs initiated this constitutional challenge to certain provisions in Pennsylvania's Home Rule and Optional Plans Law by filing a Complaint on July 22, 2015 (Doc. # 1).
2. On August 1, 2016, Plaintiffs filed two respective motions for injunctive relief with supporting briefs, see (Docs. # 10-11, 17, 20), and then filed an Amended Complaint (Doc. # 15) on August 2, 2016.

3. This Amended Complaint added the Secretary of the Commonwealth as a defendant, added allegations regarding the Plaintiffs' stated intent to pursue certain First Amendment activities at issue in the future, and modified the requested relief sought from the Court.

4. Preliminary relief was thereafter entered by the Court on August 9, 2016, granting Plaintiffs' motions in part and denying them in part. See Order (Doc. # 42), August 9, 2016.

5. This matter was subsequently stayed and administratively closed. See Order (Doc. # 56), September 30, 2016.

6. On January 11, 2019, Plaintiff OpenPittsburgh.Org filed a Motion to Lift Stay (Doc. # 58). The stay was eventually lifted and Plaintiffs were directed to file an amended complaint. See Order Approving Proposed Order (Doc. # 71), April 2, 2019, and Order Granting Motion for Leave to File Second Amended Complaint (Doc. # 73).

7. Plaintiffs thereafter filed a Second Amended Complaint (Doc. # 74) on May 6, 2019. As with the prior complaints, this action was brought pursuant to 42 U.S.C. § 1983 and was directed against a number of government and election officials from Allegheny County, Pennsylvania ("the County Defendants"), as well as against the Acting Secretary of the Commonwealth, Kathryn Boockvar ("Secretary Boockvar"). All defendants were named in their official capacity only.

8. The County Defendants filed a Motion to Dismiss (Docs. # 75-76) on June 6, 2019. Secretary Boockvar filed her Motion to Dismiss (Docs. # 77-78) on June 7, 2019. The Plaintiffs filed their response to the motions (Doc. # 82) and the Court scheduled argument on the motions for October 7, 2019.

9. Following the argument, the Court entered an Order (Doc. # 85), which granted Plaintiffs leave to file a Third Amended Complaint on or before October 28, 2019. Plaintiff's filed their Third Amended Complaint (Doc. # 86) on October 28, 2019.

10. The Third Amended Complaint (hereinafter "TAC") reiterated the claims and counts from the Second Amended Complaint, but added allegations regarding OpenPittsburgh.org's intentions and efforts with respect to circulating and filing petitions to amend both the Allegheny County Home Rule Charter and the Pittsburgh City Home Rule Charter, and identifying burdens imposed by the challenged statute to their efforts. See TAC, at ¶¶ 25-35.

11. Secretary Boockvar now moves to dismiss all claims asserted against her.

12. Secretary Boockvar now moves to be dismissed as a party in this action because certain claims have been mooted by recent changes in the Election Code, because Secretary Boockvar is not responsible for enforcing the specific provisions challenged by Plaintiffs, because Secretary Boockvar cannot afford Plaintiffs the relief they have requested and, lastly, because –despite numerous attempts– Plaintiffs still fail to state a claim on which relief may be granted. Therefore, Secretary Boockvar is entitled to be dismissed as a party to this action.

13. Secretary Boockvar has herewith filed a Brief in Support of this Motion, providing reasons in support of the foregoing assertions with greater particularity; the contents therein are incorporated by reference.

WHEREFORE, Secretary Boockvar respectfully requests that the instant motion be granted and that Secretary Boockvar be dismissed as a party to the instant action.

Respectfully submitted,

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Date: November 26, 2019

s/ Scott A. Bradley
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